

Senate Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 72

SENATE BILL 1008

AN ACT

AMENDING SECTIONS 33-1256 AND 33-1807, ARIZONA REVISED STATUTES; RELATING TO
CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-1256, Arizona Revised Statutes, is amended to
3 read:

4 33-1256. Lien for assessments; priority; mechanics' and
5 materialmen's liens; applicability

6 A. The association has a lien on a unit for any assessment levied
7 against that unit from the time the assessment becomes due. The
8 association's lien for assessments, for charges for late payment of those
9 assessments, for reasonable collection fees and for reasonable attorney fees
10 and costs incurred with respect to those assessments may be foreclosed in the
11 same manner as a mortgage on real estate BUT MAY BE FORECLOSED ONLY IF THE
12 OWNER HAS BEEN DELINQUENT IN THE PAYMENT OF MONIES SECURED BY THE LIEN,
13 EXCLUDING REASONABLE COLLECTION FEES, REASONABLE ATTORNEY FEES AND CHARGES
14 FOR LATE PAYMENT OF AND COSTS INCURRED WITH RESPECT TO THOSE ASSESSMENTS,
15 FOR A PERIOD OF ONE YEAR OR IN THE AMOUNT OF ONE THOUSAND TWO HUNDRED DOLLARS
16 OR MORE, WHICHEVER OCCURS FIRST. Fees, charges, late charges, monetary
17 penalties and interest charged pursuant to section 33-1242, paragraphs 10, 11
18 and 12, other than charges for late payment of assessments, are not
19 enforceable as assessments under this section. If an assessment is payable
20 in installments, the full amount of the assessment is a lien from the time
21 the first installment of the assessment becomes due. The association has a
22 lien for fees, charges, late charges, other than charges for late payment of
23 assessments, monetary penalties or interest charged pursuant to section
24 33-1242, paragraphs 10, 11 and 12 after the entry of a judgment in a civil
25 suit for those fees, charges, late charges, monetary penalties or interest
26 from a court of competent jurisdiction and the recording of that judgment in
27 the office of the county recorder as otherwise provided by law. The
28 association's lien for monies other than for assessments, for charges for
29 late payment of those assessments, for reasonable collection fees and for
30 reasonable attorney fees and costs incurred with respect to those assessments
31 may not be foreclosed and is effective only on conveyance of any interest in
32 the real property.

33 B. A lien for assessments, for charges for late payment of those
34 assessments, for reasonable collection fees and for reasonable attorney fees
35 and costs incurred with respect to those assessments under this section is
36 prior to all other liens, interests and encumbrances on a unit except:

37 1. Liens and encumbrances recorded before the recordation of the
38 declaration.

39 2. A recorded first mortgage on the unit, a seller's interest in a
40 first contract for sale pursuant to chapter 6, article 3 of this title on the
41 unit recorded prior to the lien arising pursuant to subsection A of this
42 section or a recorded first deed of trust on the unit.

43 3. Liens for real estate taxes and other governmental assessments or
44 charges against the unit.

45 C. Subsection B of this section does not affect the priority of
46 mechanics' or materialmen's liens or the priority of liens for other

1 assessments made by the association. The lien under this section is not
2 subject to ~~the provisions of~~ chapter 8 of this title.

3 D. Unless the declaration otherwise provides, if two or more
4 associations have liens for assessments created at any time on the same real
5 estate, those liens have equal priority.

6 E. Recording of the declaration constitutes record notice and
7 perfection of the lien for assessments, for charges for late payment of those
8 assessments, for reasonable collection fees and for reasonable attorney fees
9 and costs incurred with respect to those assessments. Further recordation of
10 any claim of lien for assessments under this section is not required.

11 F. A lien for unpaid assessments is extinguished unless proceedings to
12 enforce the lien are instituted within three years after the full amount of
13 the assessments becomes due.

14 G. This section does not prohibit actions to recover sums for which
15 subsection A of this section creates a lien or does not prohibit an
16 association from taking a deed in lieu of foreclosure.

17 H. A judgment or decree in any action brought under this section shall
18 include costs and reasonable attorney fees for the prevailing party.

19 I. The association on written request shall furnish to a lienholder,
20 escrow agent, unit owner or person designated by a unit owner a statement
21 setting forth the amount of unpaid assessments against the unit. The
22 statement shall be furnished within fifteen days after receipt of the request
23 and the statement is binding on the association, the board of directors and
24 every unit owner if the statement is requested by an escrow agency that is
25 licensed pursuant to title 6, chapter 7. Failure to provide the statement to
26 the escrow agent within the time provided for in this subsection shall
27 extinguish any lien for any unpaid assessment then due.

28 J. The association shall record in the office of the county recorder
29 in the county in which the condominium is located a notice stating the name
30 of the association or designated agent or management company for the
31 association, the address for the association and the telephone number of the
32 association or its designated agent or management company. The notice shall
33 include the name of the condominium community, the date of the recording and
34 the recorded instrument number or book and page for the main document that
35 constitutes the declaration. If an association's address, designated agent
36 or management company changes, the association shall amend its notice or
37 record a new notice within ninety days after the change.

38 K. Notwithstanding any provision in the condominium documents or in
39 any contract between the association and a management company, unless the
40 member directs otherwise, all payments received on a member's account shall
41 be applied first to any unpaid assessments, for unpaid charges for late
42 payment of those assessments, for reasonable collection fees and for unpaid
43 attorney fees and costs incurred with respect to those assessments, in that
44 order, with any remaining amounts applied next to other unpaid fees, charges
45 and monetary penalties or interest and late charges on any of those amounts.

1 L. This section does not apply to timeshare plans or associations that
2 are subject to chapter 20 of this title.

3 Sec. 2. Section 33-1807, Arizona Revised Statutes, is amended to read:
4 33-1807. Lien for assessments: priority; mechanics' and
5 materialmen's liens

6 A. The association has a lien on a unit for any assessment levied
7 against that unit from the time the assessment becomes due. The
8 association's lien for assessments, for charges for late payment of those
9 assessments, for reasonable collection fees and for reasonable attorney fees
10 and costs incurred with respect to those assessments may be foreclosed in the
11 same manner as a mortgage on real estate BUT MAY BE FORECLOSED ONLY IF THE
12 OWNER HAS BEEN DELINQUENT IN THE PAYMENT OF MONIES SECURED BY THE LIEN,
13 EXCLUDING REASONABLE COLLECTION FEES, REASONABLE ATTORNEY FEES AND CHARGES
14 FOR LATE PAYMENT OF AND COSTS INCURRED WITH RESPECT TO THOSE ASSESSMENTS, FOR
15 A PERIOD OF ONE YEAR OR IN THE AMOUNT OF ONE THOUSAND TWO HUNDRED DOLLARS OR
16 MORE, WHICHEVER OCCURS FIRST. Fees, charges, late charges, monetary
17 penalties and interest charged pursuant to section 33-1803, other than
18 charges for late payment of assessments, are not enforceable as assessments
19 under this section. If an assessment is payable in installments, the full
20 amount of the assessment is a lien from the time the first installment of the
21 assessment becomes due. The association has a lien for fees, charges, late
22 charges, other than charges for late payment of assessments, monetary
23 penalties or interest charged pursuant to section 33-1803 after the entry of
24 a judgment in a civil suit for those fees, charges, late charges, monetary
25 penalties or interest from a court of competent jurisdiction and the
26 recording of that judgment in the office of the county recorder as otherwise
27 provided by law. The association's lien for monies other than for
28 assessments, for charges for late payment of those assessments, for
29 reasonable collection fees and for reasonable attorney fees and costs
30 incurred with respect to those assessments may not be foreclosed and is
31 effective only on conveyance of any interest in the real property.

32 B. A lien for assessments, for charges for late payment of those
33 assessments, for reasonable collection fees and for reasonable attorney fees
34 and costs incurred with respect to those assessments under this section is
35 prior to all other liens, interests and encumbrances on a unit except:

36 1. Liens and encumbrances recorded before the recordation of the
37 declaration.

38 2. A recorded first mortgage on the unit, a seller's interest in a
39 first contract for sale pursuant to chapter 6, article 3 of this title on the
40 unit recorded prior to the lien arising pursuant to subsection A of this
41 section or a recorded first deed of trust on the unit.

42 3. Liens for real estate taxes and other governmental assessments or
43 charges against the unit.

44 C. Subsection B of this section does not affect the priority of
45 mechanics' or materialmen's liens or the priority of liens for other

1 assessments made by the association. The lien under this section is not
2 subject to chapter 8 of this title.

3 D. Unless the declaration otherwise provides, if two or more
4 associations have liens for assessments created at any time on the same real
5 estate those liens have equal priority.

6 E. Recording of the declaration constitutes record notice and
7 perfection of the lien for assessments, for charges for late payment of
8 assessments, for reasonable collection fees and for reasonable attorney fees
9 and costs incurred with respect to those assessments. Further recordation of
10 any claim of lien for assessments under this section is not required.

11 F. A lien for an unpaid assessment is extinguished unless proceedings
12 to enforce the lien are instituted within three years after the full amount
13 of the assessment becomes due.

14 G. This section does not prohibit:

15 1. Actions to recover amounts for which subsection A of this section
16 creates a lien.

17 2. An association from taking a deed in lieu of foreclosure.

18 H. A judgment or decree in any action brought under this section shall
19 include costs and reasonable attorney fees for the prevailing party.

20 I. On written request, the association shall furnish to a lienholder,
21 escrow agent, unit owner or person designated by a unit owner a statement
22 setting forth the amount of any unpaid assessment against the unit. The
23 association shall furnish the statement within fifteen days after receipt of
24 the request, and the statement is binding on the association, the board of
25 directors and every unit owner if the statement is requested by an escrow
26 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
27 the statement to the escrow agent within the time provided for in this
28 subsection shall extinguish any lien for any unpaid assessment then due.

29 J. The association shall record in the office of the county recorder
30 in the county in which the planned community is located a notice stating the
31 name of the association or designated agent or management company for the
32 association, the address for the association and the telephone number of the
33 association or its designated agent or management company. The notice shall
34 include the name of the planned community, the date of the recording and the
35 recorded instrument number or book and page for the main document that
36 constitutes the declaration. If an association's address, designated agent
37 or management company changes, the association shall amend its notice or
38 record a new notice within ninety days after the change.

39 K. Notwithstanding any provision in the community documents or in any
40 contract between the association and a management company, unless the member
41 directs otherwise, all payments received on a member's account shall be
42 applied first to any unpaid assessments, for unpaid charges for late payment
43 of those assessments, for reasonable collection fees and for unpaid attorney
44 fees and costs incurred with respect to those assessments, in that order,
45 with any remaining amounts applied next to other unpaid fees, charges and
46 monetary penalties or interest and late charges on any of those amounts.